IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 20569 of 2006

Date of decision: 22.12.2006.

M/s DLF Power Limited …Petitioner

Versus

Deputy Director (Revenue),
Employees State Insurance Corpn and anr …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr ML Sarin, Sr Advocate with
Mr RN Raina and Mr N.Menon, Advocates, for the petitioner.

The petitioner, by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 15.9.2006 (Annexure P20) passed by the Deputy Director (Revenue) (respondent-1).

The dispute raised in the present petition relates to the assessment of dues computed by respondent-1 for the period from 1.4.1997 to 31.3.1998 under the Employees State Insurance Act, 1948 (Act – for short) towards the employers and payable as employees contribution towards Employees State Insurance (ESI – for short). It is submitted that the dues as computed by respondent-1 are in complete disregard to the order dated 12.5.2006 (Annexure P11) passed by this Court in CWP 2940 of 2006. The petitioner has been regularly depositing the ESI dues as per law without any controversy or dispute with the respondents-authorities. It is maintaining full and complete account of the wages paid with regard to the eligible employees under the Act. The same

are subject to regular inspection from time to time. The petitioner-Company initially received a communication on 18.9.2001 (Annexure P1) from the Assistant Director (Revenue) to the effect that on the amount totaling Rs 12,32,10,194/- paid by it, as per its ledger, contribution under the Act amounting to Rs 80,08,663/- @ 6.5% had not been paid. Thereafter, there was exchange of communication between the petitioner and the respondents. Besides, the representative of the petitioner-company also appeared before the authorities. Thereafter, the Deputy Director (Revenue) (respondent-1) vide order dated 25.1.2006 (Annexure P6) ordered that contributions totaling Rs 80,08,663/- be deposited within a period of 15 days failing which the same shall be caused to be recovered under Sections 45 C to 45 I of the Act. The petitioner filed an application dated 7.2.2006 (Annexure P7) for review of the order passed under Section 45-A of the Act. However, the recovery officer issued a notice of demand dated 14.2.2006 (Annexure P8) for deposit of the amount of Rs 1,32,74,476/- which included the contribution for the period from April 1997 to March 1998 and also interest under Section 39(5)(a) of the Act. The petitioner-Company aggrieved against the aforesaid demand notice filed CWP 2940 of 2006 in this Court challenging the assessment and demand orders (Annexures P6 and P8 respectively). This Court vide order dated 27.2.2006 (Annexure P9) issued notice of motion and in the meantime recovery of the dues was stayed subject to furnishing bank guarantee by the petitioner-company undertaking to pay the dues mentioned in the notice or any other amount which may be demanded in the proceedings. On the adjourned date, written statement was filed on behalf of the respondents. In regard to the interim directions, learned counsel for the petitioner stated that instead of bank guarantee, the petitioners are agreeable to furnish security to the satisfaction of the recovery officer within a period of one week from the date of acceptance of

the offer by the respondents. Learned counsel for the respondents sought time to seek instructions in this regard. The case was adjourned to 28.4.2006 and the interim orders were to continue till then. The case was disposed of on 12.5.2006 (Annexure P11). This Court was of the opinion that the petitioner had not been given the opportunity of being heard and the liability had been fastened in utter violation of the principles of natural justice. The authority which had granted the opportunity of being heard to the petitioner had not concluded the proceedings but had been transferred. Subsequently, the new incumbent passed the impugned order without affording any opportunity of being heard to the petitioner. Accordingly, the petition was allowed on the limited ground that the petitioner had not been granted an opportunity of being heard. Consequently, the order dated 25.1.2006 was set aside. It was observed that the competent authority shall be within its rights to call for the documents required for the purposes of fastening the liability. Besides, it was also observed that it shall be appreciated if the details of the same (documents) is supplied to the petitioner within 15 days from 12.5.2006. If any additional documents were required to be seen during the course of hearing, the authority, it was observed, shall be competent to call for the same accordingly. The respondents thereafter sent a communication dated 5.6.2006 (Annexure P12) calling upon them to appear before respondent-1 for personal hearing on 16.6.2006 with all relevant documents to explain their case. Thereafter, there was exchange of correspondence between the petitioner and the respondents. Ultimately, the impugned order dated 15.9.2006 (Annexure P20) was passed which is assailed in the present petition.

Learned senior counsel appearing for the petitioner has contended that despite passing of the earlier order by this Court on 12.5.2006 (Annexure P11) in CWP 2940 of 2006 the respondents have passed the impugned order in

disregard to the principles of natural justice without affording opportunity of personal hearing to the petitioner on the merits of the case. It is also contended that liability has been fastened on the petitioner-company without calling for the documents required for determining/fastening the liability. During the course of hearing, it has not been disputed by the learned senior counsel that remedy of appeal is available to the petitioner. However, it is stated that the remedy of appeal envisages deposit of 50% of the amount demanded and it is apprehended that recovery notice would be issued by the respondents and once it is issued, the respondents can inter alia attach all moveable and immoveable properties of the company under Section 45-C of the Act.

We have given our thoughtful consideration to the contentions of the learned counsel for the petitioner.

The primary grievance of the learned senior counsel for the petitioner is that the impugned order dated 15.9.2006 (Annexure P20) is in violation of the principles of natural justice and in disregard to the order dated 12.5.2006 (Annexure P11) passed by this court in CWP 2940 of 2006. A reading of the order dated 15.9.2006 (Annexure P20) would show that despite the petitioner being supplied with the details of omitted wages as pointed out by the Inspector, the petitioner failed to supply and submit the documents/record in support of its contentions. The following observations as recorded in the impugned order dated 15.9.2006 (Annexure P20) are apposite:-

> "As per directions of the Hon'ble High Court this office vide letter dated 5.6.2006 requested the employer to appear for personal hearing on 16.6.2006 at Regional Office, Faridabad at 11.00 a.m. either in person or through an authorized representative. Shri SPS Khurana, Dy General manager (Human Resources) attended the personal hearing and requested for details of omitted wages on

which contribution has been claimed. The hearing was adjourned for 20th June 2006 on which date Sh Khurana was supplied the copy of details of omitted wages as pointed out by the Insurance Inspector during the course of inspection of the unit. He was duly advised to comply with the observations. The employer did not make any compliance to this. Therefore, vide this office letter dated 6.7.2006 he was advised to show the compliance along with documents for verification within a week in view of the directions of the Hon'ble High Court to settle the matter early. The employer vide his letter dated 12.7.2006 intimated that they are preparing the reply and the same will be submitted by the week end. Subsequent to this the employer submitted a letter dated 14th July 2006 but he failed to supply and submit the documents/records in support of his contention. The employer was again reminded vide this office letter dated 6.9.2006 to bifurcate the wages area-wise and make compliance as per his own calculations/assumption and get the same verified on the basis of documents on which the calculations is based within a week time. But here again the employer did not comply which clearly shows that he is not inclined to settle the matter and deliberately delaying the process otherwise he could have submitted the records for verification as no one has obstructed him to do so, rather the same was requested by this office."

In view of the above, read with the proceedings recorded in the speaking order dated 25.1.2006, the Deputy Director (Revenue) (respondent-1) was constrained to conclude again that contribution as demanded from the employer are finally payable and the liability to pay the same lies with the

employer. Accordingly, the amount of Rs 80,08,663/- was demanded as finally payable and the petitioner was ordered to deposit the above amount within 15 days from 25.9.2006 failing which the same shall be caused to be recovered under Sections 45C to 45I of the Act. The learned senior counsel, however, contends that the details of omitted wages which were supplied to the petitioner are contained in Annexure P15 in which no details/break up of the alleged omitted wages and method of computation has been supplied to the petitioner despite clear-cut directions of this Court in this regard. It is contended that the internal note dated 13.4.1999 (Annexure P15) was handed over by the respondent to the petitioner during the meeting held at the respondent's office on 22.6.2006. The said note (Annexure P15), it is contended, does not spell out complete details of the liability that has been fastened. The sites at which the work was carried out has been stated. However, whether these sites fall under the non-implemented area or not, it is recorded, needs to be confirmed. Since the respondents have not revealed the actual status of the sites as mentioned in the note, the petitioner has confirmed that all the four protected sites are situated in the non-implemented area. A reading of the impugned order dated 15.9.2006 (Annexure P20), however, shows that the petitioner failed to submit the documents/records in support of its contention and rather had been seeking time to file reply. In our opinion, the contentions as raised in the present petition would more appropriately be considered in appeal. The remedy of appeal is not being availed as 50% of the amount determined is liable to be deposited. In our view, merely because the remedy of appeal provided under the statute envisages the deposit of 50% of the amount demanded is by itself no ground to entertain the petition under Articles 226/227 of the Constitution of India. This Court in exercise of its supervisory writ jurisdiction would not normally conduct an enquiry with

regard to the veracity of facts on the basis of which the liability has been determined. This petition, in our opinion, does not disclose any special or peculiar reasons as to why the petitioner cannot avail the remedy of appeal.

In the circumstances, the writ petition is without merit and the same is accordingly dismissed. However, the petitioner would not be precluded from approaching the appellate authority in support of its contentions as raised in the present petition.

(S.S.NIJJAR)
JUDGE

22.12.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO